

**IN THE CIRCUIT COURT FOR COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT; CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,  
*ex rel.* LISA MADIGAN, Attorney  
General of the State of Illinois,

Plaintiff,

v.

KCBX TERMINALS COMPANY,  
a North Dakota corporation,

Defendant.

No. 2014-CH-3723

**CONSENT ORDER**

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (the "Illinois EPA"), and Defendant, KCBX TERMINALS COMPANY located at 3259 East 100<sup>th</sup> Street Site, which is commonly known as the North Site, ("Parties to the Consent Order") have agreed to the making of this Consent Order and submit it to this Court for approval.

**I. INTRODUCTION**

This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Court's entry of the Consent Order and issuance of any injunctive relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2014), and the Illinois Pollution Control Board ("Board") regulations, alleged in the First Amended Complaint (as defined below) except as otherwise provided herein. It is the intent of the parties to this Consent Order that it be a final judgment on the merits of this matter.

**A. Parties**

1. On March 4, 2014, a Complaint for Injunctive Relief and Civil Penalties was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion, pursuant to Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2014), against KCBX Terminals Company (the "Defendant").

2. On June 9, 2014, the Court entered an Order, granting Plaintiff's Motion for Leave to File First Amended Complaint.

3. On June 9, 2014, a First Amended Complaint for Injunctive Relief and Civil Penalties was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and, with respect to Counts I-IV, at the request of the Illinois EPA, pursuant to Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2014), against the Defendant (the "First Amended Complaint").

4. The Illinois EPA is an administrative agency of the State of Illinois, created by Section 4 of the Act, 415 ILCS 5/4 (2014), and charged, *inter alia*, with the duty of enforcing the Act.

5. At all times relevant to the First Amended Complaint, the Defendant was and is a North Dakota corporation qualified to transact business in the State of Illinois, which has operated and continues to operate a bulk solid materials transloading terminal located at 3259 East 100<sup>th</sup> Street, Chicago, Cook County, Illinois ("Terminal" or "Facility") for petroleum coke and coal.

## **B. Allegations of Non-Compliance**

1. Plaintiff contends that the Defendant has violated the following provisions of the Act and Board regulations:

Count I: Water Pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

Count II: Water Pollution Hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2014).

Count III: Violation of the National Pollutant Discharge Elimination System ("NPDES") Permit Program in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2014), and Section 309.102(a) of the Illinois Pollution Control Board's Water Pollution Regulations ("Board Water Pollution Regulations"), 35 Ill. Adm. Code 309.102(a).

Count IV: Failure to Control Spillage of Materials in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2014), and Section 306.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.102(b).

Count V: Open Dumping of Waste in violation of Section 21(a) of the Act, 415 ILCS 5/21(a) (2014).

2. In addition to the allegations that are the subject matter of Counts I through V of the First Amended Complaint, the Illinois EPA issued Violation Notices W-2007-00037, W-2013-50242, and VN L-2013-01310 to the Defendant on February 8, 2007, November 12, 2013, and November 25, 2013, respectively (collectively, the "Violation Notices").

## **C. Non-Admission of Violations**

The Defendant represents that it has entered into this Consent Order for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Consent Order and complying with its terms, the Defendant does

not affirmatively admit the allegations of violation within the First Amended Complaint and the Violation Notices, and this Consent Order shall not be interpreted as including such admission.

**D. Compliance Activities to Date**

1. On May 29, 2013, the Illinois EPA approved the Defendant's Operations Closure Plan in the National Pollutant Discharge Elimination System Permit Renewal (the "NPDES Permit") issued to the Defendant for the Terminal ("Operations Closure Plan"). A true and correct copy of the Operations Closure Plan is attached hereto as Exhibit A.

2. Since November 2013, the Defendant has completed multiple projects that enhanced storm water controls at the Terminal. Specifically, the Defendant added new sandbags along the north and south docks and along the slip area, thereby increasing secondary control effectiveness in all three of those Terminal areas. In the south dock area, in addition to the new sandbags, the Defendant constructed a concrete block and asphalt berm that functions as a primary storm water control. Along the slip area of the Terminal, the Defendant removed material from behind the existing concrete retaining wall, sealed cracks in the concrete retaining wall and applied asphalt patch to cracks in the slip walkway. To further enhance storm water management at the Terminal, the Defendant inspected, trenched and performed maintenance on the Terminal's internal storm water collection ditches.

**II. APPLICABILITY**

This Consent Order shall apply to and be binding upon the Parties to the Consent Order. The Defendant waives as a defense to any enforcement action taken pursuant to this Consent Order the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Consent Order. This

Consent Order may be used against the Defendant in any subsequent enforcement action or permit proceeding, as proof of a past adjudication of violation of the Act and the Board regulations for all violations alleged in the First Amended Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2014).

The Defendant shall notify each contractor to be retained to perform work required in this Consent Order of each of the requirements of this Consent Order relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Consent Order to each contractor already retained no later than thirty (30) calendar days after the date of entry of this Consent Order. In addition, the Defendant shall provide copies of all schedules for implementation of the provisions of this Consent Order to the prime vendor(s) supplying the control technology systems and other equipment required by this Consent Order.

No change in ownership, corporate status or operator of the Terminal shall in any way alter the responsibilities of the Defendant under this Consent Order. In the event that the Defendant proposes to sell or transfer any real property or operations subject to this Consent Order, the Defendant shall notify the Plaintiff thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the Facility or a portion thereof. The Defendant shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Defendant site access and all cooperation necessary for Defendant to perform to completion any compliance obligation(s) required by this Consent Order. The Defendant shall provide a copy of this Consent Order to any such successor in interest, and the Defendant shall continue to be bound by and remain liable for performance of all obligations

under this Consent Order. In appropriate circumstances, however, the Defendant and a proposed purchaser or operator of the Facility may jointly request, and the Plaintiff, in its discretion, may consider modification of this Consent Order to obligate the proposed purchaser or operator to carry out future requirements of this Consent Order in place of, or in addition to, the Defendant. This provision does not relieve the Defendant from compliance with any regulatory requirement regarding notice and transfer of applicable Facility permits.

### **III. JUDGMENT ORDER**

This Court has jurisdiction of the subject matter herein and of the Parties to the Consent Order and, having considered the stipulated facts and being advised in the premises, finds the following relief appropriate:

#### **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

##### **A. Civil Penalty**

1. The Defendant shall pay a civil penalty of Thirty-Five Thousand Dollars (\$35,000.00). Payment shall be tendered at time of entry of the Consent Order.

2. The civil penalty payment shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF").

3. The case name and case number shall appear on the face of the certified check or money order.

##### **B. Stipulated Penalties, Interest and Default**

1. If the Defendant fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Consent Order, the Defendant shall provide notice to the Plaintiff of each failure to comply with this Consent Order and shall

pay stipulated penalties in the amount of \$250.00 per day per violation for up to the first fourteen (14) days of violation and \$350.00 per day per violation thereafter until such time that compliance is achieved. The Plaintiff may make a demand for stipulated penalties upon the Defendant for its noncompliance with this Consent Order. However, failure by the Plaintiff to make this demand shall not relieve the Defendant of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date the Defendant knows or should have known of its noncompliance with any provision of this Consent Order.

2. If the Defendant fails to make any payment required by this Consent Order on or before the date upon which the payment is due, the Defendant shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Plaintiff shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

3. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Defendant not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

4. The stipulated penalties shall be enforceable by the Plaintiff and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Consent Order.

**C. Stipulated Penalty and Interest Payment Procedures**

All payments required by Section III.B of this Consent Order shall be made by certified check or money order payable to the Illinois EPA for deposit into the EPTF. Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

The case name and case number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Kathryn A. Pamenter  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602

**D. Future Compliance**

**1. Ceasing Operations at the Terminal.**

On or before June 30, 2015, the Defendant shall cease all transloading operations at, and remove all staged piles of petroleum coke and coal from, the Terminal. Transloading operations do not include the Other Closure Activities (as defined below).

**2. Sedimentation Basin Decommissioning.**

a. On July 31, 2015, the Defendant submitted to Plaintiff, for review and approval, a work plan for decommissioning the sedimentation basin located in the southwestern portion of the Terminal (the "Sedimentation Basin"), including a schedule for the timely implementation of the work plan ("Decommissioning Work Plan"). The



Decommissioning Work Plan shall be prepared pursuant to the Operations Closure Plan, and shall include, but not be limited to: (i) removing sediment from the Sedimentation Basin, (ii) managing the water in the Sedimentation Basin, in accordance with Section III.D.2.b of this Consent Order, and (iii) removal of the sheet piling and berm material separating the Sedimentation Basin from the slip.

b. To manage the water from the Sedimentation Basin, the Defendant may propose in the Decommissioning Work Plan to either (1) treat the water, as necessary and authorized by the Defendant's NPDES Permit, in order to discharge within applicable NPDES Permit limits, or (2) remove and dispose of the water. If the Defendant opts to use a different method to manage the water from the Sedimentation Basin, the Defendant shall first seek and receive written approval from the Illinois EPA.

c. If the Illinois EPA approves with conditions or disapproves of the Decommissioning Work Plan, the Defendant shall, within thirty (30) days after the date of the Illinois EPA's written notice of such approval with conditions or disapproval, unless the Illinois EPA grants, in writing, a longer time period, submit a revised plan to the Illinois EPA, that addresses all conditions or deficiencies identified by the Illinois EPA in its approval with conditions or disapproval. If the Defendant disagrees with Illinois EPA's disapproval of, or conditions imposed with respect to, the Decommissioning Work Plan, the Defendant shall, within twenty-one (21) days of receipt of the notice of disapproval or approval with conditions, invoke Dispute Resolution in accordance with Section III.G. herein.

d. In accordance with the Illinois EPA-approved Decommissioning Work Plan and corresponding schedule, the Defendant shall timely implement such work plan, including submitting all necessary permit applications to the appropriate federal, state, and/or local agencies. The Defendant shall promptly submit a copy of each permit application to the Illinois EPA.

e. Subject to Paragraphs III.E. and F. of this Consent Order, on or before December 31, 2016 (the "Closure Date"), the Defendant shall complete all activities required under the Illinois EPA-approved Decommissioning Work Plan.

f. Within ten (10) days of completing all activities required under the Illinois EPA-approved Decommissioning Work Plan, the Defendant shall submit to Illinois EPA a certification that the Sedimentation Basin Decommissioning has been completed.

3. Other Closure Activities.

a. By no later than September 30, 2015, the Defendant shall submit to Plaintiff, for review and approval, a work plan for each of the "Closure Steps" set forth in the Operations Closure Plan, except for A.5. (collectively, the "Other Closure Activities"), including a proposed implementation schedule (the "Other Closure Activities Work Plan"). The Other Closure Activities Work Plan shall be prepared pursuant to the Operations Closure Plan.

b. If the Illinois EPA approves with conditions or disapproves of the Other Closure Activities Work Plan, the Defendant shall, within thirty (30) days after the date of the Illinois EPA's written notice of such approval with conditions or disapproval, unless the Illinois EPA grants, in writing, a longer time period, submit a revised plan to the

Illinois EPA, that addresses all conditions or deficiencies identified by the Illinois EPA in its approval with conditions or disapproval. If the Defendant disagrees with Illinois EPA's disapproval of, or conditions imposed with respect to, the Other Closure Activities Work Plan, the Defendant shall, within twenty-one (21) days of receipt of the notice of disapproval or approval with conditions, invoke Dispute Resolution in accordance with Section III.G. herein.

c. In accordance with the Illinois EPA-approved Other Closure Activities Work Plan and corresponding schedule, the Defendant shall timely implement such work plan, including submitting all necessary permit applications to the appropriate federal, state, and/or local agencies. The Defendant shall promptly submit a copy of each permit application to the Illinois EPA.

d. Subject to Paragraphs III.E. and F. of this Consent Order, on or before the Closure Date, the Defendant shall complete the Other Closure Activities in accordance with the Illinois EPA-approved Other Closure Activities Work Plan.

e. Within ten (10) calendar days of completing the Other Closure Activities in accordance with the Illinois EPA-approved Other Closure Activities Work Plan, the Defendant shall submit to Illinois EPA a certification that the Other Closure Activities have been completed.

4. The Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Defendant's Facility that is the subject of this Consent Order, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. The Illinois EPA, its employees and

representatives, and the Attorney General, her employees and representatives, upon entering the Facility, shall undergo any and all training required by the Defendant's safety protocols. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary, in accordance with the Defendant's safety protocols.

5. This Consent Order in no way affects the responsibilities of the Defendant to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board regulations.

6. The Defendant shall cease and desist from future violations of the Act, the Board regulations and the Defendant's NPDES Permit that were the subject matter of the First Amended Complaint and the Violation Notices.

**E. *Force Majeure***

1. *Force majeure* is an event arising solely beyond the control of the Defendant, which prevents the timely performance of any of the requirements of this Consent Order and shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters, and labor disputes beyond the reasonable control of the Defendant. An increase in costs associated with implementing any requirement of this Consent Order shall not, by itself, excuse the Defendant for a failure to comply with such a requirement.

2. When a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Consent Order, the Defendant shall orally notify the Illinois EPA within forty-eight (48) hours of the occurrence (Calvin Harris at 847-294-4080).

Written notice shall be given to the representatives of Plaintiff listed in Section III.H. as soon as practicable, but no later than ten (10) calendar days after the claimed occurrence. This section shall be of no effect as to the particular event involved if the Defendant fails to comply with these notice requirements.

3. Within ten (10) calendar days of receipt of any written *force majeure* notice, the Plaintiff shall respond in writing regarding the Defendant's claim of a delay or impediment to performance. If the Plaintiff agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of the Defendant and that the Defendant could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay, by a period equivalent to the delay actually caused by such circumstances. Such stipulation may be filed as a modification to this Consent Order. The Defendant shall not be liable for stipulated penalties for the period of any such stipulated extension.

4. If the Plaintiff does not accept the Defendant's claim of a *force majeure* event, the Defendant must file a petition with the Court within twenty (20) calendar days of receipt of the Plaintiff's determination in order to contest the imposition of stipulated penalties. The Plaintiff shall have twenty (20) calendar days to file its response to said petition. The burden of proof of establishing that a *force majeure* event prevented the timely performance shall be upon the Defendant. If this Court determines that the delay or impediment to performance has been or will be caused by circumstances solely beyond the control of the Defendant and that the Defendant could not have prevented the delay by the exercise of due diligence, the Defendant shall be excused as to that event (including any imposition of stipulated penalties), for all

requirements affected by the delay, for a period of time equivalent to the delay or such other period as may be determined by this Court.

**F. Enforcement and Modification of Consent Order**

1. This Consent Order is a binding and enforceable order of this Court. Except as set forth in the Section III.J. of this Consent Order, this Court shall retain jurisdiction of this matter and shall consider any motion by any party for the purposes of interpreting and enforcing the terms and conditions of this Consent Order. The Defendant agrees that notice of any subsequent proceeding to enforce this Consent Order may be made by mail and waives any requirement of service of process.

2. The Parties to the Consent Order may, by mutual written consent, (a) extend any compliance dates, (b) modify the terms of this Consent Order and/or (c) modify the terms of any work plan submitted pursuant to this Consent Order, without leave of this Court. A request for any modification shall be made in writing and submitted to the designated representatives. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Consent Order. Any such agreed modification shall be in writing and signed by authorized representatives of each party, for filing and incorporation by reference into this Consent Order.

**G. Dispute Resolution**

1. Except as provided herein, the Parties to the Consent Order may seek to informally resolve disputes arising under this Consent Order, including but not limited to the Illinois EPA's decision regarding appropriate or necessary response activity, approval or denial of any report, plan or remediation objective, or the Plaintiff's rejection of a request for

modification or termination of the Consent Order. The Plaintiff reserves the right to seek enforcement by the Court where the Defendant has failed to satisfy any compliance deadline within this Consent Order. The following are also not subject to the dispute resolution procedures provided by this section: a claim of *force majeure*, a failure to make any required payment and any circumstances posing a substantial danger to the environment or to the public health or welfare of persons.

2. The dispute resolution procedure must be invoked by a party through a written notice describing the nature of the dispute and the party's position with regard to such dispute. The other party shall acknowledge receipt of the notice and schedule a meeting to discuss the dispute informally not later than fourteen (14) calendar days from the receipt of such notice. These informal negotiations shall be concluded within thirty (30) calendar days from the date of the first meeting between the parties, unless the parties agree, in writing, to shorten or extend this period. The invocation of dispute resolution, in and of itself, shall not excuse compliance with any requirement, obligation or deadline contained herein, and stipulated penalties may be assessed for failure or noncompliance during the period of dispute resolution. As part of the resolution of any dispute, the Parties to the Consent Order, by agreement or by order of this Court, may extend or modify the schedule for completion of work under this Consent Order to account for the delay in the work that occurred as a result of dispute resolution.

3. In the event that the parties are unable to reach agreement during the informal negotiation period, the Plaintiff shall provide the Defendant with a written summary of its position regarding the dispute. The position advanced by the Plaintiff shall be considered binding unless, within twenty (20) calendar days of the Defendant's receipt of the written

summary of the Plaintiff's position, the Defendant files a petition with this Court seeking judicial resolution of the dispute. The Plaintiff shall respond to the petition by filing the administrative record of the dispute and any argument responsive to the petition within twenty (20) calendar days of service of Defendant's petition. The administrative record of the dispute shall include the written notice of the dispute, any responsive submittals, the Plaintiff's written summary of its position, the Defendant's petition before the Court and the Plaintiff's response to the petition. The Plaintiff's position shall be affirmed unless, based upon the administrative record, it is against the manifest weight of the evidence.

#### **H. Notice and Submittals**

Except for payments, the submittal of any notice, reports or other documents required under this Consent Order, shall be delivered to the following designated representatives:

As to the Plaintiff

Kathryn A. Pamenter  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602

Michael Roubitchek  
Assistant Counsel, Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Scott Sievers  
Assistant Counsel, Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276



As to the Defendant

Katherine D. Hodge  
Hodge Dwyer & Driver  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-5776

Stephen A. Swedlow  
Quinn Emanuel Urquhart & Sullivan LLP  
500 W. Madison Street, Suite 2450  
Chicago, Illinois 60661

**I. Release from Liability**

In consideration of the Defendant's payment of a \$35,000.00 penalty, its commitment to cease and desist as contained in Section III.D.6. above, and completion of all activities required hereunder, the Plaintiff and the Illinois EPA hereby release, waive and discharge the Defendant from any further liability or penalties for the violations of the Act and Board regulations that were the subject matter of the First Amended Complaint and the Violation Notices. The release set forth above does not extend to any matters other than those expressly specified in Plaintiff's First Amended Complaint filed on June 9, 2014, and the Violation Notices. The Plaintiff reserves, and this Consent Order is without prejudice to, all rights of the State of Illinois against the Defendant with respect to all other matters, including but not limited to the following:

- a. criminal liability;
- b. liability for future violations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. the Defendant's failure to satisfy the requirements of this Consent Order.

Nothing in this Consent Order is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, other than the Defendant.

#### **J. Termination**

1. The Defendant may request that this Consent Order terminate no sooner than twelve (12) months after the Defendant has completed all actions required of the Defendant in the Consent Order, provided that the Defendant has been in continuous compliance with the terms of the Consent Order for the twelve (12) months preceding the request. Any such request must be made by notice to the Plaintiff and include a statement that the Defendant has completed all actions required by this Consent Order and has been in continuous compliance with the terms of the Consent Order for the twelve (12) months preceding the request and the following certification by a responsible corporate official of the Defendant:

I certify under penalty of law that this statement was prepared under my direction or supervision, and that the information submitted in or accompanying this statement of final compliance is to the best of my knowledge true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and or imprisonment for knowing violations.

2. The Plaintiff shall notify the Defendant of its decision on the request within forty-five (45) calendar days of the Plaintiff's receipt of the request. If the Plaintiff agrees to terminate this Consent Order, the Plaintiff and the Defendant shall jointly file a notice with the Court that the Consent Order is terminated. If the Plaintiff does not agree to terminate this Consent Order, the Plaintiff shall provide the Defendant written notification stating the reasons why this Consent Order should not be terminated and the Defendant may then invoke the Dispute Resolution

provisions. The Consent Order shall remain in effect pending resolution of any dispute by the parties or the Court concerning whether the Defendant has completed its obligations under this Consent Order and is in compliance with the terms of the Consent Order. The provisions of Sections III.D.6. and III.I. shall survive and shall not be subject to and are not affected by the termination of any other provision of this Consent Order.

**K. Execution and Entry of Consent Order**

This Order shall become effective only when executed by all Parties to the Consent Order and the Court. This Order may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same instrument. The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Consent Order and to legally bind them to it.

**L. City of Chicago Confirmation.**

The City of Chicago Department of Public Health has adopted Rules and Regulations for Control of Emissions from the Handling and Storage of Bulk Material Piles, which at Sections 4.0, 4.0(2) and 6.0(6) require, *inter alia*, that all petroleum coke and coal at the Site be either maintained within fully enclosed structures or removed by June 9, 2016. The City of Chicago is not a named party to this action; however, the City voluntarily submits itself to the Court's jurisdiction and affirmatively represents and confirms that if the Defendant complies with the terms of Section III.D.1. of this Consent Order, the Defendant will also satisfy the City's regulations that require the petroleum coke and coal piles to either be fully enclosed or removed at the Site by June 9, 2016.

WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:

FOR THE PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* LISA MADIGAN  
Attorney General of the State of Illinois

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

LISA BONNETT, Director  
Illinois Environmental Protection Agency

BY: Elizabeth Wallace  
ELIZABETH WALLACE, Chief  
Assistant Attorney General  
Environmental Bureau

BY: John J. Kim  
JOHN J. KIM  
Chief Legal Counsel

DATE: 9/8/15

DATE: 9/14/15

FOR THE DEFENDANT:

CONFIRMED AS TO PARAGRAPH III.L.

KCBX TERMINALS COMPANY

CITY OF CHICAGO

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**ENTERED**  
Judge Rodolfo Garcia

SEP 15 2015

ENTERED:

Circuit Court – 1727

JUDGE

DATE: \_\_\_\_\_

WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:

FOR THE PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* LISA MADIGAN  
Attorney General of the State of Illinois

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

LISA BONNETT, Director  
Illinois Environmental Protection Agency

BY: \_\_\_\_\_  
ELIZABETH WALLACE, Chief  
Assistant Attorney General  
Environmental Bureau

BY: \_\_\_\_\_  
JOHN J. KIM  
Chief Legal Counsel

DATE: \_\_\_\_\_

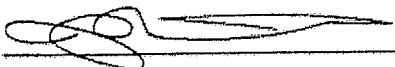
DATE: \_\_\_\_\_

FOR THE DEFENDANT:

CONFIRMED AS TO PARAGRAPH III.L.

KCBX TERMINALS COMPANY

CITY OF CHICAGO

BY:  \_\_\_\_\_  
Its: Secretary

BY: \_\_\_\_\_  
Its: \_\_\_\_\_

DATE: Sept. 3, 2015

DATE: \_\_\_\_\_

**ENTERED**  
Judge Rodolfo Garcia

ENTERED:

SEP 15 2015

Circuit Court – 1727  
JUDGE

DATE: \_\_\_\_\_

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FOR THE PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* LISA MADIGAN  
Attorney General of the State of Illinois

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

LISA BONNETT, Director  
Illinois Environmental Protection Agency

BY: \_\_\_\_\_  
ELIZABETH WALLACE, Chief  
Assistant Attorney General  
Environmental Bureau

BY: \_\_\_\_\_  
JOHN J. KIM  
Chief Legal Counsel

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

FOR THE DEFENDANT:

KCBX TERMINALS COMPANY

CONFIRMED AS TO PARAGRAPH III.L.

CITY OF CHICAGO

BY: \_\_\_\_\_

BY: Mark P. Gunn

Its: \_\_\_\_\_

Its: Senior Counsel, Law Dept.

DATE: \_\_\_\_\_

DATE: September 4, 2015

ENTERED  
Judge Rodolfo Garcia

ENTERED:

SEP 15 2015

Circuit Court - 1727  
JUDGE

DATE: \_\_\_\_\_

# EXHIBIT A

7104-111-E  
Due date 3-6-13

# KCBX Terminals Company

## Chicago Transfer Facility

## Operations Closure Plan

3259 East 100<sup>th</sup> Street

Chicago, Illinois 60617 (Cook County)

Original: 27 August 2012

Revisions:

REF  
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IL Environment  
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## KCBX Terminals Company—Chicago Transfer Facility Operations Closure Plan

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This Plan, prepared in accordance with 35 Ill. Admin. Code 405 applies to the KCBX Terminals Company ("KCBX"), Chicago transfer facility located at 3259 East 100<sup>th</sup> Street, Chicago, Illinois, 60617 (the "Site"). Within one (1) year after KCBX completely ceases Site operations and abandons all commercial activities at the Site, KCBX shall carry out and complete the following activities pursuant to 35 Ill. Admin. Code 405.109:

### SITE DESCRIPTION

KCBX operates a bulk solid materials transfer facility of approximately 53 acres, including some submerged lands at 3259 E 100<sup>th</sup> Street in Chicago, IL. The facility has historically received coal and petroleum coke by barge, rail and truck; stored these products in outdoor stock piles; and shipped these products to customers by truck, rail, barge, or lake vessel. A small amount of these products may be processed to separate debris and foreign material. The property is bounded by railroad right-of-way to the west, a barge slip off of the Calumet River to the south, the Calumet River to the east, 100<sup>th</sup> Street on the eastern end of the north property line, and vacant land on the western end of the north property line. The facility is currently authorized to discharge to the Calumet River through Outfall 001 under NPDES permit IL0071625 ("the Permit").

### CLOSURE STEPS

Upon KCBX's permanent discontinuation of site operations, the following steps will be taken to remove coal handling assets and prepare the property for final disposition:

#### A. Site Grading:

- 1) Remove all recoverable product from all areas of the Site, including earthen, asphalt and concrete areas;
- 2) Grade the Site to allow for proper drainage. This may include cutting and filling operations to establish drainage and prevent ponding of water and construction of basins to aid in erosion and sediment control;
- 3) Place six (6) inches of crushed inert material on earthen areas that were previously used to store product. Alternatively, six inches of a suitable soil material may be placed on earthen areas, seeded, and mulched;
- 4) Installation of an earthen berm along the Calumet River shoreline to control surface runoff. Rip rap or other erosion control measure may be constructed where surface runoff has the potential to cause excessive erosion; and
- 5) Remove sediment from the existing retention basin and remove the outfall and dam. This activity may extend beyond one (1) applicable year after permanent discontinuation of site activities due to the time needed to obtain all permits and complete all work.

#### B. Buildings and Coal Handling Assets:

- 1) Remove all coal handling assets, including conveyors; barge, vessel and rail loading and unloading equipment; scales; etc.;

## KCBX TERMINALS OPERATIONS CLOSURE PLAN

- 2) Remove all containers of products and other hazardous substances, if any, stored on site;
- 3) Remove all Above Ground Storage tanks;
- 4) Remove all mobile equipment, spare parts inventory, vehicles, etc.;
- 5) Demolish all buildings in poor condition and remove all non-inert material from Site for disposal; and
- 6) Clear all offices, storage buildings, shops, and support buildings of furniture, records, tools, etc.

Cleared buildings will be left in an idled condition for potential future use. Some above-grade concrete and/or paving may be removed to facilitate disposition of the property. Inert material from demolition such as concrete or brick may be used to backfill below grade openings (basements or other sub-grade structures). If needed, additional fill material will be brought onsite to bring below grade openings to ground level.

As a final step, security fencing will be inspected and repairs made, as necessary, to provide security for the Site.